

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**
10

11 MONICA WELLINGTON,

12 Plaintiff,

13 v.

14 MORTGAGE ELECTRONIC
15 REGISTRATIONS SYSTEMS, INC., *et*
16 *al.*,

17 Defendants.

Case No. 2:12-CV-00541-KJD-VCF

ORDER

18
19 Before the Court is the Motion to Dismiss (#5) filed by Defendants CitiMortgage, Inc.
20 (“CMI”) and Mortgage Electronic Registration Systems, Inc. (“MERS”). Plaintiff has filed an
21 opposition (#8) and Defendants have filed a reply (#9).

22 **I. Background**

23 Plaintiff borrowed \$238,400 from North American Savings Bank (“NASB”) in July of 2007.
24 She secured this loan with a Deed of Trust encumbering real property located at 9045 Wolf Dancer
25 Avenue, Las Vegas, Nevada. MERS, as the nominee for North American Savings Bank, was listed
26 as the beneficiary on the Deed of Trust. Plaintiff alleges that in September 2007, CMI advised her

1 that it had assumed the servicing rights for her loan. She then proceeded to make monthly mortgage
2 payments to CMI, and apparently continues to do so. In 2010, after reading reports about mortgage
3 industry fraud, Plaintiff claims she began sending correspondence to CMI seeking certain documents
4 and that CMI did not respond. Plaintiff now asserts claims against CMI and MERS to cancel the
5 Deed of Trust and to recoup all the mortgage payments she has made. Plaintiff is not in default and
6 there is no foreclosure proceeding in process.

7 II. Discussion

8 A. Legal Standard for Motion to Dismiss

9 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which
10 relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "a short
11 and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P.
12 8(a)(2); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). While Rule 8 does not require
13 detailed factual allegations, it demands "more than labels and conclusions" or a "formulaic
14 recitation of the elements of a cause of action." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
15 (citations omitted). "Factual allegations must be enough to rise above the speculative level."
16 Twombly, 550 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient
17 factual matter to "state a claim to relief that is plausible on its face." Iqbal, 556 U.S. at 678 (citation
18 omitted).

19 In Iqbal, the Supreme Court clarified the two-step approach district courts are to apply when
20 considering motions to dismiss. First, a district court must accept as true all well-pled factual
21 allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth.
22 Id. at 1950. Mere recitals of the elements of a cause of action, supported only by conclusory
23 statements, do not suffice. Id. at 1949. Second, a district court must consider whether the factual
24 allegations in the complaint allege a plausible claim for relief. Id. at 1950. A claim is facially
25 plausible when the plaintiff's complaint alleges facts that allows the court to draw a reasonable
26 inference that the defendant is liable for the alleged misconduct. Id. at 1949. Where the complaint

1 does not permit the court to infer more than the mere possibility of misconduct, the complaint has
2 “alleged—but not shown—that the pleader is entitled to relief.” *Id.* (internal quotation marks
3 omitted). When the claims in a complaint have not crossed the line from conceivable to plausible,
4 the complaint must be dismissed. *Twombly*, 550 U.S. at 570.

5 B. Standard for Pro Se Litigants

6 Plaintiff is representing herself *pro se*. Courts must liberally construe the pleadings of *pro se*
7 parties. See *United States v. Etinger*, 902 F.2d 1383, 1385 (9th Cir. 1990). However, “*pro se*
8 litigants in the ordinary civil case should not be treated more favorably than parties with attorneys of
9 record.” *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir.1986).

10 C. Plaintiff’s Claims Against MERS

11 Courts in this District and this circuit have repeatedly recognized the validity of the MERS
12 system. See e.g. *Weingartner v. Chase Home Finance, LLC*, 702 F. Supp. 2d 1276, 1280, 1828 (D.
13 Nev. 2010); *Gomes v. Countrywide Home Loans Inc.*, 121 Cal. Rptr. 3d 819, 821 (Ct. App. 2011);
14 *Cervantes v. Countrywide Home Loans*, 656 F.3d 103 (9th Cir. 2011). It is well settled that MERS
15 can be named as the nominal beneficiary of a deed of trust and, in that capacity, has the authority to
16 make assignments and substitutions. *Id.*; See also *Godino v. Countrywide KB Home Loans*, 2011 WL
17 6131602 (D. Nev. 2011).

18 Plaintiff alleges that NASB was “not a member of MERS” and therefore could not appoint
19 MERS as its nominee on the Deed of Trust. However, the Deed of Trust shows that MERS was
20 appointed as nominee by NASB. The Deed of Trust, which Plaintiff assented to, states that “MERS
21 holds only legal title to the interests granted by Borrower in this Security Interest, but, if necessary to
22 comply with law or custom, MERS (as nominee for Lender and Lender’s successors or assigns) has
23 the right to exercise any or all of those interests...” Further, the Deed of Trust provides that the Note
24 could be sold without notice to Plaintiff. Plaintiff’s claim for cancellation of instruments is not
25 plausible because it is wholly dependant on her mistaken assertion that MERS is not a valid nominee
26 under the Deed of Trust. Accordingly, Plaintiff’s first claim is dismissed.

